

REMARKS

Submitted herewith are the Supplemental Declarations under Rule 1.132 of Dr. Melvin Druin and Tim Blucher. Applicant believes these Supplemental Declarations provide additional clarification and further persuasive evidence. These declarations overcome the reasons given by the Examiner for discounting the previously submitted declarations. It is respectfully submitted that any prima facie case of obviousness that can be found in the applied references is overcome by this direct evidence in support of patentability.

Declaration of Dr. Melvin Druin

Dr. Melvin Druin is an acknowledged expert in the packaging and plastics industry with many years of experience. As indicated in his declaration, Dr. Druin initially viewed the present invention with skepticism. The applicant has found that those seeing the claimed structure for the first time often do not recognize the advantages that it provides. Dr. Druin confirms in his Supplemental Declaration that he had never seen a liner constructed in this manner. He admits having being puzzled by the contoured edge feature on first inspection. After installing it in a pan and noting the advantage provided by the contoured edge feature, Dr. Druin praised the contour feature. See Druin declaration, paragraph 13.

Dr. Druin's declaration also provides evidence that the cited references would not have made the claimed invention obvious to a person of ordinary skill in the art. Dr. Druin reviewed the application, the pending claims, the Office Action, and the

references in detail. In his Supplemental Declaration, he explains, from the perspective of a person skilled in the art, why the references relied upon for the rejections do not suggest the claimed invention to a person of ordinary skill in the field of food packaging, and gives clear reasons why such a person would not have looked to the cited structures. Dr. Druin identifies significant distinctions between the invention and each cited reference (see Druin Declaration, paragraphs 14-27).

Dr. Druin also describes a long-standing deficiency in the field of pan liners prior to the introduction of the present invention (paragraph 28). In his opinion, this long standing deficiency is direct evidence that the claimed invention was not obvious to a person of ordinary skill in the art at the time it was made (paragraph 29).

Declaration of Timothy Blucher

The Supplemental Declaration of the inventor, Timothy Blucher, provides information about the U.S. market for pan liners and extensive evidence of the commercial success of the invention in that market. The Blucher declaration demonstrates that:

- Prior to the introduction of products embodying the invention, the company that owns this application sold conventional liners. Its PanSaver® line of "contour fit" liners incorporates the features recited in the pending claims (see e.g. Paragraphs 3-5).
- Food service managers were initially skeptical about using pan liners. The introduction of products embodying the claimed features has been key in overcoming this initial skepticism (see Paragraphs 5-6).
- Many who have seen the invention in action have abandoned any initial skepticism and praised the invention. The assignee has received written testimonials from satisfied customers who specifically attest to the benefits of the features recited in the pending claims. These testimonials were in some cases solicited, and are believed to represent the honest opinions of the writers (see Paragraph 7 and Exhibit A).

- The invention has also received many unsolicited verbal testimonials from those in the industry. The declaration includes examples of specific verbal testimonials to the benefits of the contour fit feature recited in each of the pending claims (see Paragraph 8).
- Customers have such a strong preference for the claimed contour fit feature that many, including ARAMARK (the world's largest food service contractor), have issued "approved brand" or "no substitute" bid requests that specify these "contour fit" pan liners. These customers particularly and specifically demand the features recited in the pending claims, to the exclusion of products not embodying the claimed invention. If the inventive features were not important, such users would seek the lowest bid. Instead, they refuse to consider products that lack the "contour fit" feature (see Paragraph 9 and Exhibit B)
- After products embodying the present invention were introduced, sales began to increase and have steadily increased since that time despite considerable barriers in the industry, while sales of conventional liners that do not include the claimed features have fallen (see Paragraphs 10-13).
- The rapid increase in sales of products embodying claimed features has far outstripped increases in advertising and marketing expenses, and cannot be attributed merely to increased marketing efforts (see Paragraph 12).
- Within four years of introduction, products incorporating the claimed features have taken over 80% of the relevant U.S. market (see Paragraph 14).

Conclusion


Applicant thus submits that there is substantial direct evidence of patentability in virtually every category of such evidence recognized by the courts. Long-felt need, initial skepticism followed by praise and positive reaction, commercial success exemplified by widespread adoption by the food service industry, and the stated refusal by many customers to accept substitutes, are all present in this case. The direct evidence of patentability is sufficient to overcome any prima facie case of obviousness arguably made out by the cited references.

It is believed that this application is now in condition for allowance. Reconsideration of the pending rejections and a notice of allowance are earnestly

solicited. If the Examiner believes a telephone or personal conference would expedite prosecution, he is invited to contact the undersigned, who will cooperate appropriately.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read 'MBR', is written over the printed name of Michael B. Ray.

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